

The opinion in support of the decision being entered today was not written for publication and
is not binding precedent of the Board

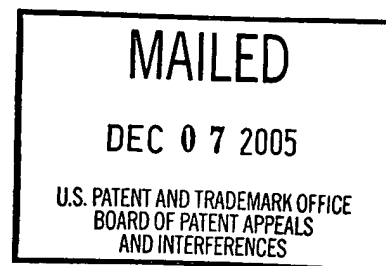
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TADASHI FUKUMOTO
and TSUYOSHI HASHIMOTO

Application No. 09/863,749

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER



This application was electronically received at the Board of Patent Appeals and Interferences on September 20, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

ARTIFACT

The above IFW file contains an artifact, No. 09863749CA, that is needed for review by the BPAI. At any such time that this appeal is returned to the Board of Patent Appeals and

Interference for consideration of the appeal, the above identified artifact should be forwarded at that time.

ENGLISH TRANSLATION

Claims on appeal include 13, 15, 16, 18, 21, 23 and 24. Prior art relied upon for the rejection of these claims include the Japanese Publication JP55-110520. An English translation of the Japanese Publication No. JP55-110520 is required.

EXAMINER RESPONSE TO REPLY BRIEF

On September 14, 2005, the examiner mailed a Response to Reply Brief acknowledging receipt of Appellant's Reply Brief, dated March 31, 2004, and including additional arguments. Accordingly, this paper would constitute being a Supplemental Examiner's Answer.

In accordance with MPEP 1207.05:

Every supplemental examiner's answer must be approved by a Technology Center (TC) Director or designee. The examiner may furnish a supplemental examiner's answer in response to any one of the following:

1. (A) *A reply brief that raises new issues.* The examiner may NOT include a new ground of rejection in the supplemental examiner's answer responding to a reply brief. See 37 CFR 41.43(a)(2). Appellant may file another reply brief in response to the supplemental examiner's answer within two months from the mailing of the supplemental answer. See MPEP § 1208.
- (B) *A remand by the Board for further consideration of a rejection under 37 CFR 41.50(a).* See MPEP § 1211.01. In response to a supplemental examiner's answer that is written in response to a remand by the Board for further consideration of a rejection, appellant must either file: (1) a reply under 37 CFR 1.111 to request that prosecution be reopened; or (2) a reply brief to request that the appeal be

maintained, within two months from the mailing of the supplemental examiner's answer, to avoid *sua sponte* dismissal of the appeal as to the claims subject to the rejection for which the Board has remanded the proceeding. Examiner may include a new ground of rejection in the supplemental examiner's answer responding to a remand by the Board for further consideration of a rejection. See MPEP § 1207.03.

(C) *A remand by the Board for other purposes that are not for further consideration of a rejection under 37 CFR 41.50(a). The examiner may NOT include a new ground of rejection in the supplemental examiner's answer responding to a remand by the Board, unless the remand is for further consideration of a rejection under 37 CFR 41.50(a) (see item B above). Appellant may file a reply brief with two months from the mailing of the supplemental answer.*

A review of the Response to Reply Brief reveals that the examiner did not provide proper approval.

Accordingly, it is

Ordered that the application is returned to the Examiner to

- 1) secure the artifact, identified as 09863749CA and forward to the Board of Patent Appeals and Interferences;
- 2) to provide an English translation of the Japanese Publication JP55-110520;
- 3) acquiring appropriate approval for the Supplemental Examiner's Answer in response to the Reply Brief mailed April 14, 2004; and
- 4) for such further action as may be deemed appropriate.

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It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal (i.e. abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES



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Application No. 09/863,749

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